

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

LLOYD LANDSMAN,

Defendant.

No. 17-cr-00653 (SIL)

LLOYD LANDSMAN'S UNOPPOSED MOTION TO TERMINATE PROBATION

Lloyd Landsman, by and through undersigned counsel, hereby respectfully moves for the early termination of the term of probation imposed at sentencing, pursuant to Title 18, United States Code, Section 3564(c) and Federal Rule of Criminal Procedure 32.1(c)(2), stating in support as follows:

1. On December 5, 2017, Dr. Landsman pleaded guilty to a one-count Misdemeanor Information (Dkt. 1), charging him with violations of 21 U.S.C. § 331(c) and 333(a)(1). *See* Dkt. 2. On the same date, the Court entered an Order of Forfeiture (Dkt. 4).
2. On February 5, 2019, the Court sentenced Dr. Landsman to a term of probation of two years, a fine of \$5,000, a special assessment of \$25, 200 hours of community service, and continuing compliance with the Order of Forfeiture. *See* Judgment (Dkt. 19).
3. Since sentencing, Dr. Landsman has satisfied the fine, special assessment and community service terms of sentence, and has made regular payments in satisfaction of the Forfeiture Order. *See* Dkts. 24, 36, 38, 39.
4. In response to the COVID-19 pandemic, on March 23, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202.10, which ordered “[t]he Commissioner of

Health . . . to direct . . . all . . . ambulatory surgery centers [and] office-based surgery practices . . . to . . . cancel[] all elective surgeries and procedures, as the Commissioner of Health shall define.”¹

5. As a result of the pandemic and the Governor’s Order, Dr. Landsman’s medical practice has come virtually to a halt, leaving it substantially unable prospectively to pay four employees (including Dr. Landsman) and four regular contractors.
6. To permit his medical practice to continue to meet its payroll, Dr. Landsman would seek a loan under the federal Payroll Protection Program (“PPP”), enacted pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which offers forgivable loans to small businesses affected by the pandemic. However, the PPP program excludes from eligibility businesses with an officer, director or key employee who is on probation, the very grounds on which his initial application to the Program was denied.² Accordingly, Dr. Landsman seeks the early termination of his probation so that he may re-apply for a PPP loan.
7. According to 18 U.S.C. § 3564(c), “[t]he court, after considering the factors set forth in section 3553(a) . . . may . . . terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor . . . if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.” *See*

¹ N.Y. Exec. Order No. 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (Mar. 23, 2020), *available at* <https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

² *See* The Small Business Administration, Interim Final Rule, 13 C.F.R. Part 120, Business Loan Program Temporary Changes, Payment Protection Program, RIN 3245-AH34, *available at* <https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule> (“You are ineligible for a PPP loan if, for example . . . [a]n owner of 20 percent or more of the equity of the applicant is . . . on probation”).

also Fed. R. Crim. P. Rule 32.1(c)(2) (permitting a court to modify conditions of probation without a hearing). “Early termination of probation is granted ‘occasionally,’ and in light of ‘changed circumstances.’” *United States v. King*, No. 07 Cr. 1143(DC), 2012 WL 1382436, at * 1 (S.D.N.Y. Apr. 20, 2012) (granting early termination of probation).

8. Here, we respectfully submit that, in view of the changed circumstances occasioned by the COVID pandemic, the interests of justice would be served by an early termination of Dr. Landsman’s probation to permit him to apply for payroll protection. He has satisfied the fine, special assessment, and community service obligations of the probationary sentence, and is otherwise in full compliance with the conditions of his probation. He has also regularly made payments toward satisfaction of his forfeiture obligation. The proposed early termination would make Dr. Landsman’s practice eligible for the PPP program, thus potentially providing funds that would allow the practice to meet payroll, at least for a period. It is respectfully submitted that the interests of maintaining the livelihood of the practice’s staff and contractors outweighs any continued penal purpose in maintaining the terms of probation.
9. Dr. Landsman’s application does not seek any amendment to the Order of Forfeiture.
10. We have conferred with Assistant United States Attorney Charles Kelly, who, on behalf of the U.S. Attorney’s Office, consents to this application. We have also consulted with U.S. Probation Officer Vincent Danielo, who communicated that the Probation Service has no opposition to this application.

* * *

Accordingly, for the foregoing reasons, we respectfully request that the Court terminate Dr. Landsman's probation. We attach a proposed Order for the Court's convenience.

Dated: New York, New York
April 16, 2020

Respectfully submitted,

By: /s/ Guy Petrillo

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